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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,365	12/13/2001	Darrin Brunk	32105	8053

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EXAMINER

LEV, BRUCE ALLEN

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/017,365

Applicant(s)

Brunk

Examiner
Bruce A. Lev

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3634



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 13, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s): _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s): _____ 6) ☐ Other:

BRUCE A. LEV
PRIMARY EXAMINER

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DETAILED ACTION

Double Patenting

1. Claim 9 objected to under 37 CFR 1.75 as being a substantial duplicate of claim 4. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

2. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 1, 3, 5, 9, and 15, there is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble clearly indicates that the subcombination of a “retainer” is being claimed with the functional recitation of the “retainer” being used “for securing a seal to a...garage door”. However, the body of the claim positively recites the “garage door”, e.g., “*seats upon...the garage door*” (claim 1, lines 6-7 and 13-14); and “thereby *securing* the retainer to...the garage door” (claim 1, lines 10-11), which indicates the claims as being drawn to a combination of the “retainer” and the “garage door”. Therefore, the applicant is required to

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clarify what the claims are intended to be drawn to, i.e., either the “retainer” alone or in combination with the “garage door”, and to present the claims with the language which is consistent with the invention. The applicant should note that “*adapted to be*” language may be appropriate if claiming the “retainer” alone (i.e., “adapted to be secured to”).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-6, 8, 9, 11, 12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by UK Patent to Parker 2,287,747.

Parker sets forth a retainer comprising an exterior tension member; an interior extension member in an opposite direction; a seal cavity; and gripping edges.

5. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Benson 4,441,301.

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As concerns claims 1-17, Benson sets forth a retainer 20 comprising an exterior tension member; an interior extension member in an opposite direction; a seal cavity; gripping edges; and being between five and twenty feet long.

As concerns claims 18-20, Benson sets forth a garage door comprising a plurality of panels 11 having a bottom surface (viewed as inclusive of members 17 and 18) including exterior and interior lips; and a retainer (as advanced above); and a seal 21 comprising a cylindrical cushion, and a retaining member 25.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 10, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker.

Parker sets forth the retainer, as advanced herein, except for the retainer being between five and twenty feet long. However, the examiner takes the position that since no engineering advantages have been set forth for forming the at particular lengths, and since numerous lengths

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would appear to work equally as well, it would have merely been an obvious design choice to form the retainer being between five and twenty feet long.

8. Claims 7, 13, and 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker.

Parker sets forth the retainer, as advanced herein, except for the cavity being offset. However, the examiner takes the position that since no engineering advantages have been set forth for forming cavity as being offset, and since other positions would appear to work equally as well, it would have merely been an obvious design choice to form the retainer being between five and twenty feet long.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

January 10, 2003

Bruce A. Lev

Primary Examiner

Group 3600

A handwritten signature in black ink, appearing to be 'B. Lev', written over the printed name and title of the examiner.